

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PATRICK C. URSCHEL, MIKE JACKO, PAUL E. ARRASMITH
and BRENT BUCKS

MAILED

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U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Appeal No. 2006-1588
Application No. 10/707,526

ON BRIEF

Before FRANKFORT, OWENS and CRAWFORD, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal is from a rejection of claims 1, 6-9, 14, 18 and 19. Claims 2-5, 10-13, 15-17 and 20, which are all of the other pending claims, stand withdrawn from consideration by the examiner as claiming a nonelected invention.

THE INVENTION

The appellants claim a method for cutting a food product wherein the food product free falls through a cutting device. Claims 1 and 14 are illustrative:

1. A method of cutting food product, the method comprising

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the steps of:

providing a cutting means comprising at least one cutting element disposed in a cutting plane that is not vertical;

individually delivering food products to the cutting means by causing the food products to free-fall through a feed passage and then free-fall through the cutting means entirely under the force of gravity and on a path that is approximately normal to the cutting plane; and

contacting the food products and positioning the food products so that they free-fall on the path at a predetermined location within a cross-section of the feed passage as the food products free-fall through the feed passage and prior to encountering the cutting means so as to produce size-reduced products of substantially consistent size and shape.

14. A method of cutting food product, the method comprising the steps of:

individually delivering food products to a cutting means comprising at least one cutting element disposed in a cutting plane that is not vertical by causing the food products to free-fall through a feed passage and then free-fall through the cutting means entirely under the force of gravity and on a path that is approximately normal to the cutting plane; and

contacting the food products and positioning the food products with a plurality of resilient members extending radially inward into the feed passage toward a central axis thereof, the resilient members causing the food products to free-fall on the path at a predetermined location within a cross-section of the feed passage as the food products free-fall through the feed passage and prior to encountering the cutting means so as to produce size-reduced products of substantially consistent size and shape.

THE REFERENCES

Leo	2,006,643	Jul. 2, 1935
Shadduck	2,572,770	Oct. 23, 1951

THE REJECTIONS

The claims stand rejected as follows: claims 1, 6 and 7 under 35 U.S.C. §102(b) as anticipated by Leo, and claims 8, 9, 14, 18 and 19 under 35 U.S.C. §103 as obvious over Leo in view of Shadduck.

OPINION

We affirm the rejection under 35 U.S.C. § 102(b) and reverse the rejection under 35 U.S.C. § 103.

Rejection under 35 U.S.C. § 102(b)

Leo discloses an apparatus for slicing molded, jelly-like materials such as foodstuffs (page 1, left column, lines 1-17). The apparatus includes a vertical tubular receptacle (20) in which a jelly-like material formed or placed therein is slidable (page 1, left column, lines 26-37). In the slicing operation, the tubular receptacle is inverted and placed over a cutting apparatus, and as the jelly-like material slides out of the receptacle it falls onto a plate (37) (page 1, left column, lines 36-40; page 2, left column, lines 1-12 and 55-58). A plunger arm (43) then is forced inwardly by pushing on its handle (44), thereby forcing a knife (42) through the jelly-like material to cut a slice therefrom while at the same time moving the plate so

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that a hole (38) therein is aligned with the jelly-like foodstuff such that the slice drops through the hole into a receptacle (page 2, left column, lines 58-71). If it is desired to dice the jelly-like material before it is sliced, it can be extruded through a die (50) comprised of a wire screen (51) or series of crisscross knife blades secured to a ring (52) mounted within the neck (45) of a top plate (40) (page 2, right column, lines 13-23).

The appellants argue that Leo's jelly-like material does not free fall through the die because it is forced therethrough by a plunger (24) (brief, page 16). The jelly-like material can fall either by mechanical force from the plunger or by gravity, i.e., free fall (page 2, left column, lines 55-58).

The appellants argue that Leo's knife (42) could not possibly make horizontal cuts through the jelly-like material if the jelly-like material were free falling through the die (brief, page 17). The jelly-like material free falls until it hits the plate (37), after which it is cut by the knife (page 2, left column, lines 55-61).

The appellants argue that the claims require that the entire product, and not a portion thereof, free falls through the cutting means, and that Leo's plate 37 limits the free fall to a portion of the material being extruded (brief, pages 17-18; reply

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brief, page 5). The claims require that the food product free falls through the cutting means entirely under the force of gravity. The claims do not require that the entire product falls unimpeded through the cutting means. The claims are open to interruptions between the cutting of portions of the food product, provided that each portion falls through the cutting means entirely under the force of gravity. Each portion of Leo's jelly-like material falls through the die entirely by the force of gravity before it hits plate 37 (page 2, left column, lines 55-58).

For the above reasons we are not convinced of reversible error in the examiner's rejection of claims 1, 6 and 7 under 35 U.S.C. § 102(b) over Leo.

Rejection under 35 U.S.C. § 103

Shadduck discloses a splitter for a vegetable such as a potato being cut to make French fries (col. 1, lines 1-9). The splitter includes inwardly sloping tongues (36) that center the potato in the splitter as the potato is dropped into position on splitting knives (24, 25) before an arcuate or hollow curvature of a plunger (17) is pressed against the upper end of the potato (col. 3, lines 19-34).

The examiner argues that "[i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to employ resilient members as taught by Shadduck on the device of Leo in order to center the food products within a casing having a cross section size larger than a cross section size of the food products so as to produce substantially uniform sized pieces" (answer, page 4).¹

Leo discloses slicing and dicing jelly-like materials that have been poured into the receptacle and allowed to set into a semi-solid jelly mass (page 2, left column, lines 1-3). Centering those materials in the receptacle is irrelevant because they fill the receptacle.

Leo discloses that in addition to molding materials in the receptacle, materials to be sliced and diced can be inserted into the receptacle, provided that the materials are moldable (page 1, left column, lines 5-13). Leo, however, indicates that the molded materials inserted into the receptacle have the same shape as the receptacle (page 2, right column, lines 46-55). Thus, even if the materials are inserted into the receptacle rather than being molded therein, the materials are centered in the

¹ The appellants argue that Leo's apparatus would produce substantially uniform sized pieces of the jelly-like material regardless of where the material is within the tubular receptacle (20), on the screen (51) during extrusion, or on the plate (37) during slicing by the knife (42) (brief, pages 21-22; reply brief, pages 6-7). As pointed out by the appellants (reply brief, page 7), the examiner has not explained

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receptacle. Consequently, there is no need for Shadduck's sloping tongues (36). Also, the examiner has not established that the applied references would have fairly suggested, to one of ordinary skill in the art, using Leo's apparatus to slice and dice materials which do not conform to the shape of the receptacle.

For the above reasons we conclude that the examiner has not established a *prima facie* case of obviousness over Leo in view of Shadduck of the invention claimed in the appellants' claims 8, 9, 14, 18 and 19.

DECISION

The rejection of claims 1, 6 and 7 under 35 U.S.C. § 102(b) over Leo is affirmed and the rejection of claims 8, 9, 14, 18 and 19 under 35 U.S.C. § 103 over Leo in view of Shadduck is reversed.

why the appellants' argument is incorrect.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(vii).

AFFIRMED-IN-PART

Charles E. Frankfort

CHARLES E. FRANKFORT

Administrative Patent Judge)

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) BOARD OF PATENT

) APPEALS

) AND

) INTERFERENCES

Terry J. Owens

TERRY J. OWENS

Administrative Patent Judge)

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